

COPY

OCT - 7 2004



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6  
7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
8  
9 IN AND FOR THE COUNTY OF MARICOPA

10 THE STATE OF ARIZONA *ex rel.* TERRY  
11 GODDARD, the Attorney General, and THE CIVIL  
12 RIGHTS DIVISION OF THE ARIZONA  
13 DEPARTMENT OF LAW,

14 Plaintiff,

15 vs.

16 FELIKS MLYNARCZYK and BOZENA  
17 MLYNARCZYK, individually, as husband and  
18 wife, and as trustees of the MLYNARCZYK  
19 LIVING TRUST,

20 Defendants.

No. CV2004-015446

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES**

(Assigned to Hon. Kenneth L. Fields)

21 For its complaint, Plaintiff, the State of Arizona, states and alleges, as follows:

22 INTRODUCTION

23 Plaintiff initially commenced this action pursuant to A.R.S. § 41-1491.27 of the Arizona  
24 Fair Housing Act to obtain temporary judicial relief to preserve the status quo pending completion  
25 of its administrative investigation of two fair housing complaints against Defendants. The Court  
26 granted a temporary restraining order ("TRO"), and scheduled a preliminary injunction hearing in  
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1 this matter for November 5, 2004. Since commencement of this action, Plaintiff has concluded  
2 its administrative investigation of the fair housing complaints and has issued findings of  
3 reasonable cause to believe that race and color discrimination occurred. Plaintiff is now filing the  
4 present complaint against Defendants under the Arizona Fair Housing Act, A.R.S. §§ 41-1491 to  
5 41-1491.37, to obtain permanent injunctive and affirmative relief, damages, and a statutory civil  
6 penalty for housing discrimination based on race and color.  
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#### 8 JURISDICTION AND VENUE

- 9 1. This court has jurisdiction of this matter pursuant to A.R.S. § 41-1491.34(A).
- 10 2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

#### 11 PARTIES

12  
13 3. Plaintiff Arizona Civil Rights Division of the Arizona Department of Law ("the  
14 Division") is an administrative agency of the State of Arizona established by A.R.S. § 41-1401 to  
15 enforce the provisions of the Arizona Civil Rights Act ("ACRA"), A.R.S. §§ 41-1401 to 41-  
16 1493.02, including the Arizona Fair Housing Act.

17  
18 4. Defendants Feliks Mlynarczyk and Bozena Mlynarczyk are husband and wife and  
19 reside at 245 Sacred Eagle Lane in Sedona, Arizona. At all relevant times, these defendants acted  
20 for and on behalf of their marital community. Upon information and belief, these Defendants are  
21 also trustees and beneficiaries of Defendant Mlynarczyk Living Trust.

22  
23 5. The Division brings this action on its own behalf and on behalf of Dr. Philip  
24 Edington and Mrs. Kristina Edington, husband and wife ("the Edingtons"), and on behalf of Roy  
25 E. Grimm ("Grimm") dba Buyer Brokers Realty of Sedona. The Edingtons and Grimm are  
26 aggrieved persons within the meaning of A.R.S. § 41-1491(1).  
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## GENERAL ALLEGATIONS

6. At all relevant times, Defendants Feliks Mlynarczyk and Bozena Mlynarczyk and/or Defendant Mlynarczyk Living Trust have owned and still currently own the approximately 2 acre parcel of residential vacant land adjacent to their residence on Sacred Eagle Lane in Sedona, Arizona and variously designated as parcel no. 408-31-104A or parcel no. 408-31-104L ("the subject property"). The subject property may be used to construct or locate a building or structure that is designed or intended for occupancy as a residence by one or more families.

7. The subject property is rare because it is undeveloped residential property at a high elevation, has an unobstructed and unblockable red rock view, borders national forest land, and is just outside the city limits, but provides all city services other than sewer and water while still offering the seclusion and privacy of a larger acreage property.

8. Prior to April 2004, Defendants posted signs on Red Rock Loop Road and on the subject property indicating that the subject property was available for sale by owner.

9. Licensed Arizona realtor, Edward Pennington ("Pennington") of Buyer Brokers Realty of Sedona ("Buyer Brokers") observed the signs and spoke with Defendant Feliks Mlynarczyk ("F. Mlynarczyk") about the subject property on a few occasions. During these conversations, F. Mlynarczyk gave Pennington a handwritten map showing, among other things, the location of the subject property and F. Mlynarczyk's asking price of \$450,000. F. Mlynarczyk also verbally promised that, in exchange for Pennington's real estate services in providing a buyer to purchase the subject property, F. Mlynarczyk would allow Buyer Brokers to retain whatever the buyer offered above the \$450,000 asking price. Pennington told F. Mlynarczyk that he had a few potential buyers who might be interested in purchasing the subject property.



1           10.     During the week of April 12, 2004, Pennington showed the subject property to his  
2 client, Dr. Philip Edington ("Dr. Edington"), whose race is African American and whose color is  
3 Black. Thereafter, the Edingtons decided to purchase the subject property and live there with their  
4 children.

5           11.     On or about April 16, 2004, the Edingtons signed a vacant land/lot purchase contract  
6 ("the purchase contract") offering to buy the subject property from Defendants for \$470,000 in cash.  
7 This amount included Defendants' full asking price of \$450,000 plus \$20,000 for Buyer Brokers.  
8

9           12.     On or about April 21, 2004, Defendants F. Mlynarczyk and Bozena Mlynarczyk met  
10 with Pennington at their home. At that time, Pennington presented Defendants with the purchase  
11 contract for the subject property, and a compensation agreement for Buyer Brokers to receive sales  
12 proceeds of \$20,000 from Defendants for Buyer Brokers' real estate services.  
13

14           13.     During the April 21, 2004 meeting, Defendant Bozena Mlynarczyk informed  
15 Pennington that she had observed some people walking on the subject property and asked if they  
16 were Pennington's clients. Pennington indicated that it was possible because his clients had planned  
17 to see the subject property again. After reviewing the purchase contract, F. Mlynarczyk told  
18 Pennington that he had one question: "Are the buyers Black?" Pennington told Defendants that  
19 Dr. Edington was Black. F. Mlynarczyk then told Pennington that he would not accept the purchase  
20 contract because he would not sell his property to Black people. F. Mlynarczyk then asked if  
21 Pennington had another client who was White, and proposed taking the subject property off the  
22 market for about a month after which Pennington's White client could purchase the subject  
23 property.  
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1           14.     Pennington contacted F. Mlynarczyk by telephone on or about April 22, 2004 and on  
2 or about May 12, 2004, asking if F. Mlynarczyk would reconsider selling the subject property to the  
3 Edingtons despite F. Mlynarczyk's previous decision not to sell the subject property to Black  
4 people, but F. Mlynarczyk refused. The May 12, 2004 telephone conversation was tape-recorded at  
5 the Division's request.  
6

7           15.     On or about May 28, 2004, the Edingtons filed an administrative fair housing  
8 complaint with the Division against F. Mlynarczyk, for allegedly refusing to sell and otherwise  
9 making the subject property unavailable to the Edingtons due to race and color and for making  
10 discriminatory statements relating to the sale of the subject property, all in violation of the Arizona  
11 Fair Housing Act.  
12

13           16.     On or about June 3, 2004, Grimm, as broker and owner of Buyer Brokers, filed an  
14 administrative fair housing complaint with the Division against F. Mlynarczyk for allegedly refusing  
15 to sell and otherwise making the subject property unavailable to the Edingtons due to race and color  
16 and for making discriminatory statements relating to the sale of the subject property, all in violation  
17 of the Arizona Fair Housing Act. The Edingtons' fair housing complaint and Buyer Brokers' fair  
18 housing complaint are referred to collectively as "the fair housing complaints."  
19

20           17.     In response to the fair housing complaints, F. Mlynarczyk claimed that he had  
21 received a \$500,000 offer ("the \$500,000 offer") for the subject property, but stated that he would  
22 sell the subject property to the Edingtons for \$501,000 (\$51,000 higher than F. Mlynarczyk's  
23 original asking price) provided that the sale closed within 90 days of July 7, 2004.  
24

25           18.     On July 29, 2004, F. Mlynarczyk testified before the Division that he had solicited  
26 the \$500,000 offer for the subject property from his brother after receiving the fair housing  
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1 complaints. F. Mlynarczyk further testified that his brother could not afford to pay the offered  
2 amount, but that F. Mlynarczyk planned to "carry" the approximately \$300,000 balance between  
3 what his brother offered and what his brother could afford to pay for the subject property, and that  
4 there was another person interested in purchasing the subject property. F. Mlynarczyk's brother  
5 denies that he ever offered to purchase the subject property for \$500,000.

6  
7 19. At some point after refusing the Edingtons' offer to purchase the subject property and  
8 offering to hold the subject property for sale to the Edingtons at a higher price, F. Mlynarczyk re-  
9 posted a for sale sign for the purpose of soliciting additional purchase offers for the subject property,  
10 and also retained the services of a Sedona realtor to value the subject property.

11  
12 20. On or about August 12, 2004, Plaintiff obtained a temporary restraining order to  
13 preserve the status quo pending resolution of the fair housing complaints. A preliminary injunction  
14 hearing is scheduled for November 5, 2004.

15  
16 21. On or about September 7, 2004 and September 9, 2004, Plaintiff issued findings in  
17 the fair housing complaints, determining that there is reasonable cause to believe that Defendants  
18 engaged in discrimination in violation of the Arizona Fair Housing Act against the Edingtons  
19 because of race and color and against Grimm, as the Edingtons' broker. Thirty days have passed  
20 since the Division issued the first finding and, despite conciliation efforts, the parties have not  
21 reached agreement to resolve the fair housing complaints.

22  
23 COUNT ONE

24 (Race and Color Discrimination in Violation of A.R.S. § 41-1491.14, Arizona Fair Housing Act)

25 22. Plaintiff realleges and incorporates by reference the allegations contained in  
26 paragraphs 1 through 21 of this Complaint.  
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23. A.R.S. § 41-1491(7) of the Arizona Fair Housing Act defines “dwelling,” as either:

(a) Any building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families.

(b) Any vacant land that is offered for sale or lease for the construction or location of a building, structure or part of a building or structure described by subdivision (a) of this paragraph.

24. The subject property is a dwelling within the meaning of A.R.S. § 41-1491(7) of the Fair Housing Act.

25. On or about April 21, 2004, the Edingtons made a bona fide offer to purchase the subject property from Defendants through Pennington.

26. Under A.R.S. § 41-1491.14(A) of the Arizona Fair Housing Act, a person may not refuse to sell a dwelling after a bona fide offer has been made, or refuse to negotiate for the sale of a dwelling, or otherwise make unavailable or deny a dwelling to any person because of race or color.

27. Defendants refused to sell the subject property to the Edingtons after a bona fide offer was made, and otherwise made the subject property unavailable or denied the subject property to the Edingtons because of Dr. Edington's race or color, in violation of A.R.S. § 41-1491.14(A) of the Arizona Fair Housing Act.

28. Under A.R.S. § 41-1491.14(B) of the Arizona Fair Housing Act, a person may not discriminate against any person in the terms, conditions or privileges of sale of a dwelling because of race or color.

29. Defendants also discriminated against the Edingtons because of race or color after notice of their fair housing complaint by offering to sell the subject property to them at a higher

1 price than they were offering to sell the subject property to others, in violation of A.R.S. § 41-  
2 1491.14(B).

3 30. As a result of Defendants' discrimination, the Edingtons suffered actual damages  
4 including damages for emotional distress, humiliation and loss of civil rights, in an amount to be  
5 determined at trial.

6 31. The Edingtons also will suffer irreparable harm if Defendants sell, encumber, rent, or  
7 otherwise transfer ownership or possession of the subject property to others because the Edingtons  
8 will forever lose the opportunity to own and live on the subject property.

9 32. As a result of Defendants' discrimination against the Edingtons, Grimm lost a  
10 \$20,000 real estate commission on the sale of the subject property and suffered other damages in an  
11 amount to be determined at trial.  
12

## 13 COUNT TWO

14 (Race and Color Discrimination in Violation of A.R.S. §§ 41-1491.15, Arizona Fair Housing Act)

15 33. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1  
16 through 32 of this Complaint.  
17

18 34. Under A.R.S. § 41-1491.15 of the Arizona Fair Housing Act, a person may not make  
19 a statement with respect to the sale of a dwelling that indicates any preference, limitation or  
20 discrimination based on race or color, or an intention to make such a preference, limitation or  
21 discrimination.  
22

23 35. On or about April 21, 2004, Defendant F. Mlynarczyk made a statement to  
24 Pennington indicating that Defendants would not sell the subject property to the Edingtons because  
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1 of Dr. Edington's race or color. Defendants made the statement in violation of A.R.S. § 41-1491.15  
2 of the Arizona Fair Housing Act.

3 36. As a result of Defendants' discriminatory conduct, the Edingtons suffered actual  
4 damages including damages for emotional distress, humiliation and loss of civil rights in an amount  
5 to be determined at trial.

6  
7 37. The Edingtons also will suffer irreparable harm if Defendants sell, encumber, rent, or  
8 otherwise transfer ownership or possession of the subject property to others because the Edingtons  
9 will forever lose the opportunity to own and to live on the subject property.

10 38. As a result of Defendants' discrimination against the Edingtons, Grimm lost a  
11 \$20,000 real estate commission on the sale of the subject property and suffered other damages in an  
12 amount to be determined at trial.  
13

### 14 COUNT THREE

15 (Discrimination in Violation of A.R.S. § 41-1491.18, Arizona Fair Housing Act)

16 39. Plaintiff realleges and incorporates by reference the allegations contained in  
17 paragraphs 1 through 38 of this Complaint.  
18

19 40. Under A.R.S. § 41-1491.18 of the Arizona Fair Housing Act, a person may not  
20 coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or having  
21 exercised or enjoyed any right granted or protected by A.R.S. § 41-1491.18 and A.R.S. §§ 41-  
22 1491.14 and 41-1491.15.  
23

24 41. Defendants interfered with the Edingtons' exercise and enjoyment of their right to  
25 purchase the subject property without discrimination on the basis of Dr. Edington's race or color, in  
26 violation of A.R.S. §§ 41-1491.14, 41-1491.15, and 41-1491.18.  
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42. Defendants retaliated against the Edingtons for exercising their right to file a fair housing complaint against Defendants by raising the sales price of the subject property after notice of the Edingtons' fair housing complaint, all in violation of A.R.S. § 41-1491.18.

43 As a result of Defendants' discriminatory conduct, the Edingtons suffered actual damages including damages for emotional distress, humiliation and loss of civil rights in an amount to be determined at trial.

44. The Edingtons also will suffer irreparable harm if Defendants sell, encumber, rent, or otherwise transfer ownership or possession of the subject property to others because the Edingtons will forever lose the opportunity to own and to live on the subject property.

45. As a result of Defendants' discrimination against the Edingtons, Grimm lost a \$20,000 real estate commission on the sale of the subject property and suffered other damages in an amount to be determined at trial.

COUNT FOUR

(Practice of Discrimination in Violation of A.R.S. § 41-1491.35, Arizona Fair Housing Act)

46. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 45 of this Complaint.

47. Plaintiff has reasonable cause to believe that Defendants denied the Edingtons the right, under A.R.S. §§ 41-1491.14, 41.1491.15, and 41-1491.18 of the Arizona Fair Housing Act, to purchase the subject real property without discrimination because of Dr. Edington's race and color.

48. The denial of the Edingtons' right not to be subjected to discrimination in the purchase of a dwelling based on race and color, raises an issue of general public importance under A.R.S. § 41-1491.35 of the Arizona Fair Housing Act.

1           49.     Additionally, Defendant F. Mlynarczyk's misstatements under oath to the Division  
2 during the course of the Division's administrative investigation with respect to sale of the subject  
3 property, including the nonexistent \$500,000 purchase offer from F. Mlynarczyk's brother,  
4 demonstrate that Defendant F. Mlynarczyk is engaged in a pattern or practice of resistance to the full  
5 enjoyment of the right of the Edingtons and others not to be discriminated against in the sale of a  
6 dwelling because of race and color.  
7

8           50.     To vindicate the public interest, imposition of a civil penalty against Defendants of  
9 up to \$50,000 for a first violation and up to \$100,000 for a subsequent violation is appropriate under  
10 A.R.S. § 41-1491.35 of the Arizona Fair Housing Act.  
11

12           WHEREFORE, Plaintiff requests that the Court grant the following relief:

- 13           A. Judgment against Defendants for discrimination against the Edingtons on the basis  
14 of race and color, in violation of the Arizona Fair Housing Act;
- 15           B. Compensatory damages against Defendants in an amount to be determined at trial  
16 to compensate the Edingtons for monetary damages and emotional distress,  
17 humiliation and denial of civil rights;  
18
- 19           C. Compensatory damages against Defendants to compensate Roy E. Grimm dba  
20 Buyer Brokers Realty of Sedona for loss of a real estate sales commission and  
21 other expenses incurred as a result of Defendants' unlawful discrimination against  
22 the Edingtons;  
23
- 24           D. A statutory civil penalty against Defendants to vindicate the public interest for  
25 denying the Edingtons the right to purchase a dwelling without discrimination  
26 based on race and color, and for Defendants' pattern or practice of resisting the  
27  
28



1 full enjoyment of rights granted under the Arizona Fair Housing Act, in an amount  
2 up to \$50,000 for a first violation and up to \$100,000 for a second violation  
3 pursuant to A.R.S. § 41-1491.35;

4 E. A permanent injunction enjoining Defendants, their officers, directors, partners,  
5 agents, employees, successors and assigns and all persons in active concert and  
6 participation with them, from engaging in any housing-related practice which  
7 discriminates on the basis of race or color or interferes with the exercise of rights  
8 granted by the Arizona Fair Housing Act;

10 F. A permanent injunction enjoining Defendants, their officers, directors, partners,  
11 agents, employees, successors and assigns and all persons in active concert and  
12 participation with them, from selling, encumbering, renting, or otherwise  
13 transferring ownership, security interests, or possession of the subject property,  
14 consisting of an approximately 2 acre parcel of residential vacant land adjacent to  
15 their residence on Sacred Eagle Lane in Sedona, Arizona and variously designated  
16 as parcel no. 408-31-104A or parcel no. 408-31-104L, to any person or entity  
17 other than the Edingtons;

20 G. An order affirmatively requiring Defendants to transfer good title for the subject  
21 property to the Edingtons promptly upon receipt of the Edingtons' payment for the  
22 subject property in an amount to be determined by the Court;

24 H. An order requiring the Division to monitor Defendants' compliance with the  
25 Arizona Fair Housing Act and an order for Defendants to pay the Division a  
26 reasonable amount for such monitoring;

1 I. An award to the Division for its costs and reasonable attorneys fees in bringing  
2 this action; and

3 J. Such other and further relief as the Court deems just and proper in the public  
4 interest.

5 DATED this 7<sup>th</sup> day of October, 2004.

6  
7 TERRY GODDARD  
Attorney General

8  
9 By Sandra R. Kane  
10 Sandra R. Kane  
Assistant Attorney General  
11 Civil Rights Division  
Attorneys for Plaintiff

12 Copy of the foregoing and a  
13 Copy of the summons mailed  
14 this 7 day of October 2004, to:

15 Peter H. Westby, Esq.  
16 Gregory L. Harding, Esq.  
17 Platt & Westby, PC  
2916 N. Seventh Avenue  
18 Phoenix, AZ 85013  
Attorneys for Defendants

19  
20 By [Signature]

21 #265505